

Appl. No. 10/705,636
Amdt dated Aug. 9, 2004
Reply to Office Action of May 7, 2004

REMARKS/ARGUMENTS

Amendments to the application have been made to comply with examiner concerns and to clarify aspects in the specification and claims. The amendments are believed to be consistent with the disclosure originally filed. The amendments have also been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively effecting the scope of protection provided by the disclosure and claims of the present application, and particularly to avoid prosecution history estoppel, limitation of the scope of equivalences, or the like. Claims 1-43 and 46-47 remain in this application. Claims 44 and 45 have been canceled, claims 46 and 47 have been newly added and claims 1, 22 and 28 have been amended.

The Applicant thanks the Examiner for the telephone conference with Applicant's representative, Nicole A. Ressue, of Santangelo Law Offices, P.C., on August 5, 2004, relative to the May 7, 2004 office action, during which the enablement concerns to claims 44 and 45 were discussed, although no agreement was reached.

The Applicant kindly notes that a Supplemental Information Disclosure Citation was filed on April 21, 2004. While the present action has cited all of the U.S. patent documents from this supplemental citation, none of the foreign patent documents were shown as considered. The Applicant has included a copy of the citation along with the letter of transmittal and the corresponding certificates of mailing that were filed on April 21, 2004. Should the Examiner need any further information, please contact the undersigned below.

Claim Objections

Claim 1 has been amended to correct grammatical errors.

Specification

Page 1 of the specification has been amended to insert the issued patent number of the priority case pursuant to the action's request.

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35 U.S.C. § 112 Concerns

The action expressed 35 U.S.C. § 112, first and second paragraph concerns to the claims. With respect to claim 1, the claim states, *inter alia*, "the weighing means communicates an output signal being significant for the detected weight" and "an output significant of the identity of the animal is communicated from the identification means". Significant, in this context, may be understood as an output that has or expresses a meaning such as indicative or suggestive of something. Accordingly, an output signal may signify a detected weight or may even signify an identity of an animal and the like.

Claim 16 recites, "the computed feed ration". In claim 1 line, 25, "the computed feed ration" is stated with antecedent basis on line 20, "computing by means of the control unit a feed ration". The applicant believes that claim 16 has proper antecedent basis.

With respect to claims 22 and 28, the applicant has amended the claims to address the clarity concerns raised by the office. The applicant has clarified claims 22 and 28 to provide, "wherein said step of selecting by means of the control unit a subgroup of animals from the heard comprises the step of selecting a subgroup ..." and "wherein said step of selecting a subgroup comprises the step of selecting a subgroup...", respectively.

Claims 44 and 45 have been canceled and rewritten as newly added independent claims 46 and 47. Claim 46 combines claims 1 and 44 and claim 47 combines claims 1 and 45. Applicant has clarified these claims so that the system requirements are stated. For example, a weighing means for determining a weight range may be one of the functions performed by a computer system or even a computer program. It is asserted that one skilled in the art could use such a computer system or even a computer program without undue experimentation.

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35 U.S.C. § 102

The action has expressed concerns to the claims under § 102 and cites a Dell Computer Corporation website of October 7, 1997 ("Dell"). A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. The identical invention must be shown in complete detail as is contained in the claim.

The claims 46 and 47 are directed to a computer system and computer program, respectively, that include:

means for selecting a subgroup of animals from the herd;

a weighing means for determining a weight range from which the weight of each of the selected animals should not deviate at a selected future date;

means for monitoring the weight of each individual animal by regular, automatic detection of the weight;

means for communicating an output signal from the weighing means being significant for the detected weight to a control unit;

an identification means for automatically identifying the individual animal;

means for communicating an output significant of the identity of the animal from the identification means to the control unit;

means for adding the output from the weighing means into a record pertaining to the individual animal, the record being selected from a plurality of records comprised within said data storage means by use of the output from the identification means,

means for storing said record in the data storage;

means for computing a feed ration for each individual animal based on data comprised within the record pertaining to said animal, on the selected weight range, and on the selected date;

means for controlling an automatic feeding unit, wherein each individual animal is automatically identified by the identification means;

a feed dispersing means for dispersing the computed feed ration for the individual animal; and

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means for adding data concerning the feeding of the individual animal to the record pertaining to said animal.

This approach is entirely unlike that taught by the Dell reference which does not teach the use of a computer system or even a computer program that can perform any of the specific tasks as described in claims 46 and 47. The Dell reference merely includes a computer with a general operating system. Accordingly, independent claims 46 and 47 are differentiated from the Dell reference and the applicant respectfully requests reconsideration and allowance of the claims.

Double Patenting

The action has expressed concerns to the claims in the present application under the judicially created doctrine of double patenting over claims 1-44 of U.S. Patent No. 6,659,039. Since this patent was issued to the same inventor and is owned by the assignee, the assignee hereby signs and submits a Terminal Disclaimer under 37 C.F.R. § 1.321 to overcome these concerns.

Conclusion

The applicant gratefully acknowledges that the action considers claims 1-43 to be allowable if the 35 U.S.C. § 112, second paragraph concerns were overcome and a terminal disclaimer was filed. Because these concerns should now be overcome and because all objections should now be overcome, it is respectfully submitted that the instant application should now be in a condition for allowance. Favorable reconsideration and an early Notice of Allowance are earnestly solicited.

Because the additional prior art cited by the action has been included merely to show the state of the prior art and has not been utilized to reject the claims, no further comments concerning these documents are considered necessary at this time.

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In the event that any outstanding matters remain in this application, the Examiner is invited to contact the undersigned at (970) 224-3100.

Dated this 9th day of August, 2004.

Respectfully submitted,
SANTANGELO LAW OFFICES, P.C.

By Nicole A. Ressue

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